

IN THE MATTER OF : BEFORE THE
MARTIN KOLLAR : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 06-050V

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DECISION AND ORDER

On March 5, 2007, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Martin Kollar, Petitioner, for a variance to reduce the required 50 foot setback from a collector public street right-of-way to 21 feet for a single-family detached dwelling to be located in an R-20 (Residential - Single) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Thomas M. Meachum, Esquire, represented the Petitioner. Martin Kollar appeared in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, located in the 5th Election District on the south side of Harriett Tubman Lane approximately 1,500 feet northwest of the Freetown Road intersection. This property is identified as Tax Map 35, Grid 24, Parcel 130, and the address is 8010 Harriett Tubman Lane (the “Property”).

The Property is a triangular-shaped lot narrowing from front to back consisting of approximately 9,583 square feet (.2140 acres) in area.

2. The Petitioner, the owner of the Property, proposes to construct a 1,800 square foot single-family detached dwelling towards the north end of the Property. As proposed, the dwelling will be located approximately 21 feet from Harriett Tubman Lane. The dwelling would, therefore, encroach approximately 29 feet into the Harriett Tubman Lane collector public street 50-foot setback required by Section 108.D.4.a(1)(a)(ii).

3. All adjacent properties on the south side of Harriett Tubman Lane are also zoned R-20. To the east, the property is Parcel 128, which is improved with a single-family detached dwelling and also appears to be used for a school bus facility. The property to the south is Parcel 129, which is improved with a single-family detached dwelling. To the west, the property is Parcel 126, which is vacant. To the north, across Harriett Tubman Lane, the property is zoned R-SC and is principally the site of the Atholton High School.

4. Martin Kollar testified that the house will be within the widest part of the property and that it is proposed to be located as far back into the property as possible without encroaching into the side yard setbacks and to allow some amount of side access between the front and back yards. Mr. Kollar noted that as

shown on the proposed home plan, a 6-foot board-on-board fence is proposed for the east side of the property. There is a row of mature growth evergreen trees on the west side. Supplemental information provided with the Petition indicates that the proposed house is farther away from the road than the current house, which was described as uninhabitable and has to be taken down because of its obsolescence. Mr. Kollar submitted as Petitioner's Exhibit 1, a House Elevation Drawing of the proposed dwelling. The proposed ingress and egress to the Property is via an existing gravel driveway that runs along the northeast edge of the property; from the left front of the proposed dwelling approximately 30 feet to Harriett Tubman Lane. Mr. Kollar testified that the parking areas and driveway are located such that there is adequate sight distance in both directions to provide safe egress from the property.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

1. Unique Physical Condition. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

The Property is one of the smallest and narrower lots in the neighborhood. Indeed, it is hard to imagine how any reasonably sized single-family dwelling could fit within the current building envelope due to the size and narrowness of the buildable area of the lot. Consequently, I find that the size and narrowness of the property is a unique physical condition that cause the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. Effect of Variance on Character of the Neighborhood and Public Welfare. The provisions relating to property zoned R-20 (Residential - Single) are found in Section 108 of the Zoning Regulations. One of the uses permitted as a matter of right is one single-family detached dwelling unit per lot. Section 108B.1. The proposed single family detached dwelling will be used for permitted residential purposes in an R-20 Zoning District and will not change the residential nature or intensity of the use. There is safe ingress and egress to the Property. No evidence was introduced to suggest that permitting the requested variance would negatively impact the public welfare. I, therefore, find that the variance, if granted, will not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. Practical Difficulty or Hardships Not Created by the Owner. The practical difficulty in complying strictly with the setback regulation arises from the size and shape of the Property and was not created by the Petitioner. Within

the intent and purpose of Section 130.B.2.a(3), the Petition complies with the regulation.

4. Minimum Variance Necessary to Afford Relief. The proposed dwelling will be located in the only area practical to locate a residential dwelling due to the size and narrowness of the Property. Within the intent and purpose of the regulations then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

Based upon the foregoing Findings of Fact, and for the reasons stated above, I find that the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

ORDER

Based upon the foregoing, it is this **day of** **2007**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Martin Kollar for a variance to reduce the required 50 foot setback from a collector public street right-of-way to 21 feet for a proposed single-family detached dwelling to be located in an R-20 (Residential - Single) Zoning District is hereby **GRANTED;**

Provided, however, that the variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Ernest Stokes, Esq, LC

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.